

1 SENATE BILL NO. 143

2 INTRODUCED BY BOHLINGER

3 BY REQUEST OF THE STATE AUDITOR

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "CHARITABLE GIFT ANNUITY", "CHARITABLE
6 ORGANIZATION", AND "QUALIFIED CHARITABLE GIFT ANNUITY"; PROVIDING THAT A QUALIFIED
7 CHARITABLE GIFT ANNUITY IS NOT INSURANCE; REQUIRING THAT CHARITABLE ORGANIZATIONS
8 ENTERING INTO A CHARITABLE GIFT ANNUITY AGREEMENT GIVE NOTICE TO DONORS AND THE
9 STATE AUDITOR; ~~REQUIRING THE NOTICE TO DONORS TO INCLUDE A STATEMENT OF WHETHER THE
10 CHARITABLE ORGANIZATION HAS EVER INITIATED A LAWSUIT AGAINST A FEDERAL OR STATE
11 GOVERNMENTAL AGENCY;~~ PROVIDING A FINE FOR FAILURE TO GIVE PROPER NOTICES;
12 CONFORMING CHARITABLE GIFT ANNUITY LAWS TO LAWS RELATED TO DEDUCTIONS FOR
13 CHARITABLE CONTRIBUTIONS AND TAX CREDITS FOR CONTRIBUTIONS TO QUALIFIED ENDOWMENTS;
14 AMENDING SECTIONS 15-30-121, 15-30-165, AND 15-31-114, MCA; AND PROVIDING AN IMMEDIATE
15 EFFECTIVE DATE AND AN APPLICABILITY DATE."

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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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19 NEW SECTION. **Section 1. Definitions.** In [sections 1 through 5], the following definitions apply:

20 (1) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable
21 organization in return for an annuity payable over one or two lives, for the duration of that life or those lives,
22 under which the actuarial value of the annuity is less than the value of the cash or other property transferred and
23 the difference in value constitutes a charitable deduction for federal tax purposes.

24 (2) "Charitable organization" means an entity described by:

25 (a) section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(3); or

26 (b) section 170(c) of the Internal Revenue Code of 1986, 26 U.S.C. 170(c).

27 (3) (a) "Qualified charitable gift annuity" means a charitable gift annuity, described by section 501(m)(5)
28 of the Internal Revenue Code of 1986, 26 U.S.C. 501(m)(5), section 514(c)(5) of the Internal Revenue Code of
29 1986, 26 U.S.C. 514(c)(5), section 1011(b) of the Internal Revenue Code of 1986, 26 U.S.C. 1011(b), and the
30 implementing regulations, that is issued by a charitable organization that, on the date of the annuity agreement:

1 (i) has a minimum of \$300,000 net worth or has a minimum of \$100,000 in unrestricted cash, cash
2 equivalents, or publicly traded securities, exclusive of the assets funding the annuity agreement;

3 (ii) has been in continuous operation for at least 3 years or is a successor or affiliate of a charitable
4 organization that has been in continuous operation for at least 3 years; and

5 (iii) maintains a separate annuity fund with at least one-half the value of the initial amount transferred
6 for outstanding annuities.

7 (b) If the charitable organization cannot meet the requirements of subsections (3)(a)(i) through (3)(a)(iii),
8 the issuance of a qualified charitable gift annuity by a charitable organization must be commercially insured by
9 a licensed insurance company that is qualified to do business in Montana.

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11 **NEW SECTION. Section 2. Charitable gift annuity not insurance.** (1) The issuance of a qualified
12 charitable gift annuity does not constitute engaging in the business of insurance in this state.

13 (2) A charitable gift annuity issued before [the effective date of this act] is a qualified charitable gift
14 annuity for purposes of [sections 1 through 5], and the issuance of that charitable gift annuity does not constitute
15 engaging in the business of insurance in this state.

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17 **NEW SECTION. Section 3. Notice to donor.** (1) When entering into an agreement for a qualified
18 charitable gift annuity, the charitable organization shall disclose to the donor, in writing, in the annuity agreement,
19 that a qualified charitable gift annuity is not insurance under the laws of this state and is not subject to regulation
20 by the commissioner or protected by an insurance guaranty association.

21 (2) The notice provisions required by this section must be in a separate paragraph in print size that is
22 not smaller than that employed in the annuity agreement generally.

23 ~~_____ (3) THE NOTICE REQUIRED BY THIS SECTION MUST INCLUDE A STATEMENT INFORMING THE DONOR OF WHETHER~~
24 ~~THE CHARITABLE ORGANIZATION HAS EVER INITIATED A LAWSUIT AGAINST A FEDERAL OR STATE GOVERNMENTAL AGENCY.~~

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26 **NEW SECTION. Section 4. Notice to commissioner.** (1) A charitable organization that issues
27 qualified charitable gift annuities shall notify the commissioner in writing within 90 days after [the effective date
28 of this act] or the date on which it enters into the organization's first qualified charitable gift annuity agreement
29 AND SHALL NOTIFY THE COMMISSIONER ON MARCH 1 OF EACH YEAR IN WHICH THE CHARITABLE ORGANIZATION ISSUES
30 QUALIFIED CHARITABLE GIFT ANNUITIES. The notice must:

- 1 (a) be signed by an officer or director of the organization;
- 2 (b) identify the organization;
- 3 (c) certify that:
- 4 (i) the organization is a charitable organization; and
- 5 (ii) the annuities issued by the organization are qualified charitable gift annuities.
- 6 (2) The organization is not required to submit additional information except:
- 7 (A) WITHIN 30 DAYS OF RECEIPT OF A WRITTEN REQUEST, TO PROVIDE THE COMMISSIONER WITH FINANCIAL
- 8 DOCUMENTS VERIFYING INFORMATION THAT WAS PROVIDED TO THE COMMISSIONER IN THE NOTICE; OR
- 9 (B) to enable the commissioner to determine appropriate penalties that may be applicable under [section
- 10 5].

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12 NEW SECTION. **Section 5. Failure to provide required notice.** The failure of a charitable

13 organization to comply with the notice requirements imposed under [sections 3 and 4] does not prevent a

14 charitable gift annuity that otherwise meets the requirements of [sections 1 through 5] from constituting a

15 qualified charitable gift annuity. The commissioner may enforce performance of the requirements of [sections

16 3 and 4] by sending a letter by certified mail, return receipt requested, demanding that the charitable organization

17 comply with the requirements of [sections 3 and 4]. The commissioner may fine the charitable organization in

18 an amount not to exceed \$1,000 for each qualified charitable gift annuity agreement issued until the time that

19 the charitable organization complies with [sections 3 and 4].

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21 SECTION 6. SECTION 15-30-121, MCA, IS AMENDED TO READ:

22 **"15-30-121. Deductions allowed in computing net income.** (1) In computing net income, there are

23 allowed as deductions:

24 (a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and

25 211 of the Internal Revenue Code of 1954 (26 U.S.C. 161 and 211), or as sections 161 and 211 are labeled or

26 amended, subject to the following exceptions, which are not deductible:

- 27 (i) items provided for in 15-30-123;
- 28 (ii) state income tax paid;
- 29 (iii) premium payments for medical care as provided in subsection (1)(g)(i);
- 30 (iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii); and

- 1 (v) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable
2 gift annuity as defined in [section 1];
- 3 (b) federal income tax paid within the tax year;
- 4 (c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through
5 (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as
6 follows:
- 7 (i) expenses for household and dependent care services necessary for gainful employment incurred
8 for:
- 9 (A) a dependent under 15 years of age for whom an exemption can be claimed;
- 10 (B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income
11 do not apply, who is unable to provide self-care because of physical or mental illness; and
- 12 (C) a spouse who is unable to provide self-care because of physical or mental illness;
- 13 (ii) employment-related expenses incurred for the following services, but only if the expenses are
14 incurred to enable the taxpayer to be gainfully employed:
- 15 (A) household services that are attributable to the care of the qualifying individual; and
- 16 (B) care of an individual who qualifies under subsection (1)(c)(i);
- 17 (iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household
18 is furnished by an individual or, if the individual is married during the applicable period, is furnished by the
19 individual and the individual's spouse;
- 20 (iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:
- 21 (A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during
22 the year only to the extent that the expenses do not exceed \$4,800;
- 23 (B) expenses for services in the household are deductible under subsection (1)(c)(i) for
24 employment-related expenses only if they are incurred for services in the taxpayer's household, except that
25 employment-related expenses incurred for services outside the taxpayer's household are deductible, but only
26 if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that
27 the expenses incurred during the year do not exceed:
- 28 (I) \$2,400 in the case of one qualifying individual;
- 29 (II) \$3,600 in the case of two qualifying individuals; and
- 30 (III) \$4,800 in the case of three or more qualifying individuals;

- 1 (v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during
2 which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by
3 one-half of the excess of the combined adjusted gross income over \$18,000;
- 4 (vi) for purposes of this subsection (1)(c):
- 5 (A) married couples shall file a joint return or file separately on the same form;
- 6 (B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred
7 are deductible only if:
- 8 (I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent
9 that they are a direct result of the employment; or
- 10 (II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);
- 11 (C) an individual legally separated from the individual's spouse under a decree of divorce or of separate
12 maintenance may not be considered as married;
- 13 (D) the deduction for employment-related expenses must be divided equally between the spouses when
14 filing separately on the same form;
- 15 (E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year
16 and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not
17 deductible as employment-related expenses;
- 18 (d) in the case of an individual, political contributions determined in accordance with the provisions of
19 section 218(a) and (b) of the Internal Revenue Code (now repealed) that were in effect for the tax year ended
20 December 31, 1978;
- 21 (e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed
22 as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;
- 23 (f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject
24 to the conditions set forth in 15-30-156;
- 25 (g) the entire amount of premium payments made by the taxpayer, except premiums deducted in
26 determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:
- 27 (i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the
28 taxpayer's dependents, and the parents and grandparents of the taxpayer; and
- 29 (ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified
30 long-term care services, as defined in 26 U.S.C. 7702B(c), for:

- 1 (A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or
- 2 (B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the
- 3 taxpayer for tax years beginning after December 31, 1996;
- 4 (h) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year;
- 5 and
- 6 (i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209,
- 7 81-7-118, or 81-7-201.
- 8 (2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home
- 9 or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child
- 10 and at least one unrelated child in the ordinary course of business may deduct employment-related expenses
- 11 considered to have been paid for the care of the child.
- 12 (b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal
- 13 to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours
- 14 of care. The employment-related expenses apply regardless of whether any expenses actually have been paid.
- 15 Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).
- 16 (c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the
- 17 deduction under this subsection (2)."

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19 **SECTION 7. SECTION 15-30-165, MCA, IS AMENDED TO READ:**

20 **"15-30-165. (Temporary) Qualified endowments credit -- definitions -- rules.** For the purposes of

21 15-30-166, the following definitions apply:

- 22 (1) Subject to subsection (3), "planned gift" means an irrevocable contribution to a permanent
- 23 endowment held by a tax-exempt organization, or for a tax-exempt organization, when the contribution uses any
- 24 of the following techniques that are authorized under the Internal Revenue Code:
- 25 (a) charitable remainder unitrusts, as defined by 26 U.S.C. 664;
- 26 (b) charitable remainder annuity trusts, as defined by 26 U.S.C. 664;
- 27 (c) pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);
- 28 (d) charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);
- 29 (e) charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);
- 30 (f) charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

- 1 (g) deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
- 2 (h) charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B);
- 3 (i) paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.
- 4 (2) (a) "Qualified endowment" means a permanent, irrevocable fund that is held by a Montana
- 5 incorporated or established organization that:
- 6 (i) is a tax-exempt organization under 26 U.S.C. 501(c)(3); or
- 7 (ii) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf
- 8 of a tax-exempt organization.
- 9 (b) For the purposes of sections 15-30-165 through 15-30-167, the affordable housing revolving loan
- 10 account established in 90-6-133 is considered to be a qualified endowment.
- 11 (3) (a) A contribution using a technique described in subsection (1)(a) or (1)(b) is not a planned gift
- 12 unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust
- 13 may not be assigned or contributed to the qualified endowment sooner than the earlier of:
- 14 (i) the date of death of the beneficiaries; or
- 15 (ii) 5 years from the date of the contribution.
- 16 (b) A contribution using the technique described in subsection (1)(g) is not a planned gift unless the
- 17 payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life
- 18 expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables adopted
- 19 by rule by the department in effect on the date of the contribution.
- 20 (c) A contribution using a technique described in subsection (1)(f) or (1)(g) is not a planned gift unless
- 21 the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be
- 22 assigned to the qualified endowment sooner than the earlier of:
- 23 (i) the date of death of the annuitant or annuitants; or
- 24 (ii) 5 years after the date of the contribution.
- 25 (d) A contribution using a technique described in subsection (1)(f) or (1)(g) is not a planned gift unless
- 26 the annuity is a qualified charitable gift annuity as defined in [section 1].
- 27 (4) The department shall adopt rules to prepare life expectancy tables that are derived from the actuarial
- 28 tables contained in the most recent Publication 1457 by the internal revenue service. (Subsection (2)(b)
- 29 terminates December 31, 2004--sec. 7, Ch. 411, L. 2001; section terminates December 31, 2007--sec. 5, Ch.
- 30 226, L. 2001.)"

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SECTION 8. SECTION 15-31-114, MCA, IS AMENDED TO READ:

"15-31-114. Deductions allowed in computing income. (1) In computing the net income, the following

deductions are allowed from the gross income received by the corporation within the year from all sources:

(a) all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes.

(d) the amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness

1 created for the purchase, maintenance, or improvement of property or for the conduct of business unless the
2 income from the property or business would be taxable under this part.

3 (e) (i) taxes paid within the year, except the following:

4 (A) taxes imposed by this part;

5 (B) taxes assessed against local benefits of a kind tending to increase the value of the property
6 assessed;

7 (C) taxes on or according to or measured by net income or profits imposed by authority of the
8 government of the United States;

9 (D) taxes imposed by any other state or country upon or measured by net income or profits.

10 (ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school
11 district, or municipality of this state.

12 (f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

13 (g) (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that
14 qualify for deduction under section 170 of the Internal Revenue Code, as amended.

15 (ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion
16 of contributions made under this subsection.

17 (iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the
18 annuity is a qualified charitable gift annuity as defined in [section 1].

19 (h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209,
20 81-7-118, or 81-7-201.

21 (2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market
22 value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological
23 equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited
24 postsecondary school located in Montana if:

25 (a) the contribution is made no later than 5 years after the manufacture of the donated property is
26 substantially completed;

27 (b) the property is not transferred by the donee in exchange for money, other property, or services; and

28 (c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the
29 property and representing that the use and disposition of the property will be in accordance with the provisions
30 of subsection (2)(b).

